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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GABRIEL ANTONIO ESPINOZA,

Defendant and Appellant.

G055787

(Super. Ct. No. 14NF5173)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Patrick Donahue, Judge. Affirmed.

David Andreasen, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler and Julie L. Garland, Assistant Attorneys General, Charles C. Ragland and Alana Cohen Butler, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted defendant Gabriel Antonio Espinoza of first degree murder (Pen. Code, § 187, subd. (a)) but did not find the financial gain special circumstance to be true. The court sentenced defendant to a prison term of 25 years to life.

On appeal, defendant contends there was insufficient evidence of premeditation and deliberation to support the verdict. He accordingly argues the judgment violates his due process rights. We reject defendant's contentions and affirm the judgment.

FACTS

The Incident

Defendant, who was 29 years old at the time of the incident, was in debt and did not have a job. He took out a loan and used a car his mother, Emma Espinoza, had given him as collateral. The car was repossessed after he defaulted on the loan. Defendant's student loan payments also were past due, and he had a judgment entered against him for rent he owed to an ex-girlfriend.

Defendant also had a strained relationship with Espinoza who lived in Lompoc. He had stolen checks from her in the past and stopped speaking to her in March 2014 after they had an argument about her attendance at defendant's marathon.

In July 2014, defendant and Espinoza exchanged e-mails. In Espinoza's e-mail to defendant, she said she had been receiving calls from defendant's creditors. She also mentioned a set of keys she found in her house and asked defendant if he had been in her house.

On July 14, defendant went to Espinoza's house around 5:00 p.m. Later in the evening, Espinoza sent a text message to John G., a friend who was having an affair with Espinoza. Espinoza told John she was driving defendant to Santa Maria where he

lived with his father. She later sent another text message to John and referenced the keys she had found in her house. She said defendant apparently had gone into her house to take a nap and ran out when John had arrived. She said defendant was “pissed” because she took back the house key. She also said she told defendant they could work on their relationship but that she would not do all the work.

On July 16, Espinoza attended a social work function and purchased wine at a grocery store. She sent a text message to John at 11:35 p.m., and he responded at 12:44 a.m. At 6:53 a.m. on July 17, John received a text message from Espinoza’s phone stating she had a family emergency and needed to go out of town.

Espinoza was not scheduled to work on July 17 and did not show up to work the next day on July 18. Meanwhile, John’s wife, Diana, had plans to stay at Espinoza’s house on July 17. She had heard Espinoza was out of town so she let herself into the house with a key Espinoza had given to John. Diana noticed Espinoza’s bed was stripped down, there were pillows on the floor, her sheets were in the dryer, and her guest bathmat was in the washing machine but had not been washed.

When Espinoza did not show up to work on July 18, her coworkers and friends tried to reach her on her cell phone. In some instances, the text messages sent from Espinoza’s phone were inconsistent with how she normally communicated. Some people received text messages from Espinoza’s phone indicating she had a family emergency and would be back to work on Monday.

On July 18 or 19 at around 3:30 a.m., a woman was walking her dog near an apartment complex in La Habra where defendant had lived about 10 years earlier. The woman saw a “Mexican” man with a large dog parked on the street. Defendant owned a Rottweiler at the time. The man was standing near the car’s trunk and was adjusting a blanket.

A few days later, another resident discovered Espinoza’s body near the carport of the apartment complex and called the police. Espinoza was clothed only in her

underwear, and a large number of branches were on top of her body. Her sister testified Espinoza slept in her underwear or nude.

An autopsy revealed Espinoza had multiple fresh contusions on various parts of her body consistent with a violent struggle. She had fractures to her front ribs, which were caused before she died, and her neck was fractured post-mortem. The neck fracture was consistent with her body being forced into a tight location like the trunk of a car. Edema in her lungs suggested her death was not immediate. Based on the autopsy, the medical examiner opined Espinoza's death was a homicide due to asphyxiation by chest compression. He agreed her injuries were consistent with someone straddling her and placing an object over her mouth, but a definitive finding of smothering could not be made due to the decomposition of her body.

The deputy coroner estimated Espinoza had died at some point between July 16 and 18. Another expert estimated Espinoza's body was placed in the parking lot as early as July 17 and no later than July 18.

On July 18 at 1:56 p.m., Espinoza's debit card was used at a gas station in Diamond Bar, and her cell phone records show her phone was in the area around the same time. That evening, defendant was in Long Beach and had his dog with him. He was driving Espinoza's Acura and offered to sell it to someone he knew. Throughout that weekend, he spent some time with his friend. He told the friend to tell the police he was with him all weekend if the police came looking for him.

On July 20, Espinoza's debit card was used at another gas station in Diamond Bar. Security camera footage showed a man putting gas into a car that looked like Espinoza's Acura. That evening, defendant arrived late to a family dinner at a restaurant in Santa Maria. He was acting strange and took out a lot of money from his wallet when it was time to pay for dinner. His family thought this was odd because defendant was not working at the time.

Defendant abandoned Espinoza's car on a street in Santa Maria. There was a significant amount of dog hair and saliva in the car, and the DNA of the saliva matched defendant's dog. Defendant's DNA was found on the driver's seat, passenger's front seat, and gas cap. Espinoza's blood was found in the trunk.

On July 22, defendant called the police and said he was concerned his mother was missing. He ultimately declined to file a missing person report. On July 23, the police notified defendant of Espinoza's death and noticed defendant's right eye appeared to be bruised. That afternoon, defendant went to the administration building where Espinoza had worked to discuss her life insurance policy. Defendant was the sole beneficiary of her life insurance policy and a retirement account.

Defendant's Interview with the Police

During an August 6 interview with the police, defendant said he and Espinoza had stopped talking after an argument in March 2014. He then sent an e-mail to Espinoza on July 11 and went to her house on July 14 after he did not hear back from her. They talked, and he asked if she could give him some money to help him out. During that meeting, she took back the house key she had given to defendant.

Defendant also reported he was at a friend's house in Long Beach from July 18 to July 20. He left Long Beach on July 20 and attended a family dinner in Santa Maria where he was dropped off by a friend. He denied having anything to do with Espinoza's death and denied having been in her Acura.

Defendant's Trial Testimony

At trial, defendant testified about his July 14 meeting with Espinoza. He claimed he told Espinoza the car she had given him was repossessed and that he needed to go to Long Beach to make a payment to get the car back. She offered to let him use

her Acura, mentioned she was not working on July 17, and said she would leave the car keys for him if she was not home.

According to defendant, he picked up the car from Espinoza's house on July 17. He then drove to Santa Maria and parked the car down the street because he did not want his family to know his car had been repossessed. He testified this was why he lied to the police about driving Espinoza's Acura.

He testified he went to Long Beach on July 18 and spent the weekend there. He denied using Espinoza's debit card to buy gas and denied trying to sell the Acura to a friend. He also claimed he abandoned the Acura after he found out about Espinoza's death because he was scared.

DISCUSSION

Defendant contends there was insufficient evidence of premeditation and deliberation. We disagree.

“Review on appeal of the sufficiency of the evidence supporting the finding of premeditated and deliberate murder involves consideration of the evidence presented and all logical inferences from that evidence in light of the legal definition of premeditation and deliberation. . . . Settled principles of appellate review require us to review the entire record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—from which a reasonable trier of fact could find that the defendant premeditated and deliberated beyond a reasonable doubt. [Citations.] The standard of review is the same in cases . . . where the People rely primarily on circumstantial evidence.” (*People v. Perez* (1992) 2 Cal.4th 1117, 1124.) We ““must accept logical inferences that the jury might have drawn from the evidence even if [we] would have concluded otherwise.”” (*People v. Halvorsen* (2007) 42 Cal.4th 379, 419.)

“‘An intentional killing is premeditated and deliberate if it occurred as the result of preexisting thought and reflection rather than unconsidered or rash impulse.’” (*People v. Jennings* (2010) 50 Cal.4th 616, 645.) “‘Deliberation’ refers to careful weighing of considerations in forming a course of action; ‘premeditation’ means thought over in advance.” (*People v. Koontz* (2002) 27 Cal.4th 1041, 1080.) “‘The process of premeditation and deliberation does not require any extended period of time. “The true test is not the duration of time as much as it is the extent of the reflection.”’” (*Ibid.*)

In *People v. Anderson* (1968) 70 Cal.2d 15 (*Anderson*), our Supreme Court “‘identified three categories of evidence relevant to determining premeditation and deliberation: (1) events before the murder that indicate planning; (2) a motive to kill; and (3) a manner of killing that reflects a preconceived design to kill.” (*People v. Gonzalez* (2012) 54 Cal.4th 643, 663.) The *Anderson* guidelines are not all required or exclusive; they are descriptive. (*Gonzalez*, at p. 663.) Here, the record includes sufficient evidence of planning activity, motive, and a manner of killing that reflects a preconceived murder.

First, there was substantial evidence of planning. Espinoza’s body was clothed only in her underwear, which was consistent with how she slept at night, her bed sheets were in the dryer, and the last text message she sent was at 11:35 p.m. on July 16 followed by a text the next morning about a fake family emergency. Based on this evidence, the jury could reasonably conclude defendant planned to attack Espinoza while she was in bed at night.

Defendant argues there was no sign of forced entry into the house and notes there was evidence of a violent struggle. But this is not inconsistent with a finding that defendant planned to attack Espinoza while she was in bed or that he tried to cover up the evidence by washing the sheets. In fact, defendant told the police he entered the house through a side door that was open. Defendant also argues it does not make sense to assume he “inexplicably decided to take the guest bedroom bathmat and towels, place

them in the washer he just used, and leave them there.” Again, this is not inconsistent with a finding that he attacked Espinoza while she was in bed at night.

Defendant also knew Espinoza was not working on July 17. As the People note, this supports a finding that he planned the murder because he had “a head start on covering up the crime since she was not expected at work until Friday.” Defendant argues the only evidence he knew Espinoza was not working on July 17 was his own testimony that Espinoza agreed to let him borrow her car to go to Long Beach to make a payment on his loan. He claims “[a] juror who did not believe [Espinoza] actually made that offer . . . would have no basis to conclude that [she] told him she had Thursday off.” Nonsense. A juror could disbelieve defendant’s alibi but also conclude defendant knew Espinoza was not working that day.

Second, although evidence of motive is weaker, the jury heard evidence that defendant had a strained relationship with Espinoza. There was evidence defendant and Espinoza had an argument and did not speak for about four months before her death. Although Espinoza told John she and defendant were working on their relationship, she also took back a house key she had given to defendant, and she described his reaction as “pissed.” Although the jury found the murder was not committed for financial gain, there was evidence defendant had been estranged from Espinoza, was financially struggling, asked Espinoza for financial help, and left Espinoza’s house angry on July 14. A reasonable jury could find defendant had a motive to kill Espinoza. (*People v. Jackson* (1989) 49 Cal.3d 1170, 1200 [“[T]he law does not require that a first degree murderer have a ‘rational’ motive for killing. Anger at the way the victim talked to him . . . may be sufficient”].)

Defendant contends he “had long had a strained relationship” with Espinoza so “it is not as though [Espinoza] taking back her house key or refusing to help [defendant] would have been shocking.” He also claims “the fact [he] was ‘pissed’ at [Espinoza] is entirely consistent with his having killed her during an argument”

Even assuming the evidence of defendant's actions was also consistent with a factual finding of no deliberation or premeditation, our role is not to reweigh the evidence.

Third, the manner of killing suggests premeditation and deliberation. Although the medical examiner could not definitely conclude that Espinoza was smothered to death, he agreed her injuries were consistent with someone straddling her and placing an object over her mouth. He also opined Espinoza's death was a homicide due to asphyxiation by chest compression. Based on this evidence, the jury could reasonably conclude defendant smothered Espinoza, which supports a finding that the murder was preconceived rather than the result of a rash impulse. Smothering a victim who had retired to her bed for the night is a fact from which the "jury could infer that the *manner* of killing was so particular and exacting that the defendant must have intentionally killed according to a 'preconceived design' to take the victim's life in a particular way. . . ." (*Anderson, supra*, 70 Cal.2d at p. 27.)

Finally, defendant's conduct after the killing supports the jury's finding of premeditation and deliberation. (See *People v. Perez, supra*, 2 Cal.4th at p. 1128 [conduct after the killing "would appear to be inconsistent with a state of mind that would have produced a rash, impulsive killing"]; *People v. Disa* (2016) 1 Cal.App.5th 654, 667 [same].) The People presented evidence that defendant may have washed Espinoza's bed sheets to hide evidence of the killing. He then used her debit card and car over the weekend and offered to sell her car to a friend. He also spent time with his friends in the days after her murder, told one of his friends to lie to the police about where defendant had been that weekend, and used Espinoza's cell phone to communicate with family about a fake family emergency. The jury could consider these actions to be inconsistent with a rash and impulsive killing.

While reasonable minds may differ on the issue of premeditation and deliberation, our only role is to determine if "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (*Jackson v. Virginia*

(1979) 443 U.S. 307, 319; see *People v. Osband* (1996) 13 Cal.4th 622, 690.) Based on the entire record, “[t]he evidence presented in the instant case, while perhaps allowing for other possibilities, nevertheless supports a rational trier of fact’s conclusion that the murder committed was premeditated and deliberate, thus constituting first degree murder.” (*People v. Francisco* (1994) 22 Cal.App.4th 1180, 1192.)

DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.